

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7696-2019 (O&M)
Decided on: 30.11.2022

ROHITASH YADAV

....Petitioner

Versus

STATE OF HARYANA AND OTHERS

.... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. S.P. Yadav, Advocate
for the petitioner/complainant.

Ms. Vibha Tiwari, AAG, Haryana
for respondents.

DEEPAK GUPTA, J (ORAL)

This revision is directed against the order dated 05.11.2019 (Annexure P-1) passed by the Court of learned Additional District Judge, Narnaul, whereby an application moved by defendants (respondents herein) to condone the delay of 1066 days in filing the appeal titled 'State of Haryana & Others vs. Dr. Rohtash [CNR N: HRNR01-005807-2017], has been allowed.

2. It is contended on behalf of the petitioner/plaintiff that his suit for grant of decree of mandatory & perpetual injunction was decreed by learned Trial Court vide judgment dated 16.12.2014 (Annexure P-2). The impugned order Ex.P8 dated 08.02.2010 was held to be illegal. Injunction was granted restraining the defendants/respondent from making any deduction from the salary of the plaintiff fixed by the Civil Surgeon vide order dated 27.02.2009.

3. Against the above said judgment/decreed, defendants filed an

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appeal on 16.12.2017 along with an application to condone the huge delay of 1066 days. That application has been allowed by learned Additional District Judge, Narnaul. It is contended that there was no justification to condone the delay. In a similar matter titled as *K.K. Yadav Vs. State of Haryana*, the department went upto Hon'ble Supreme Court of India without any delay. Hon'ble Supreme Court ruled against the department in the similar circumstances and therefore, the appeal filed by the defendants with a huge delay of 1066 days, is nothing but a measure to harass the petitioner.

4. Notice of motion.

5. Ms. Vibha Tiwari, AAG, Haryana has accepted the notice. Counsels for both the parties have been heard.

6. As evident from the impugned order, to justify the plea for condonation of delay, it was pleaded by the defendants that Assistant District Attorney Narnaul had opined that the judgement of the trial Court was fit to file appeal. File was sent for recommendation to the Legal Remembrancer to the Government of Haryana, who agreed with the opinion of the District Attorney and directed the appellants to file the appeal. The letter was marked by appellant No.4 to the concerned official namely Vijay Singh Assistant, who did not prepare the necessary papers regarding filing of the appeal with the help of the District Attorney Narnaul and rather, he lost the file. The matter was later on brought to the notice of appellant No.4 by the accountant and all this caused the delay of 1066 days in filing the appeal, which was not intentional.

7. In order to condone the delay, Ld. ADJ has relied on **State of Nagaland Vs. Lipok Ao 2005 (2) CCC 422**, wherein it was observed by

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Hon'ble Supreme Court that the court should always take a justice oriented approach while considering an application for condonation of delay. If the court is convinced that there had been an attempt on the part of government officials or public servants to defeat justice by causing delay, the court in view of the large public interest, should take a lenient view in such situations and condone the delay, howsoever huge may be the delay; and to decide the matter on merits.

8. In **State of Madhya Pradesh & Ors. Vs Bherulal, SLP (c) no.9217 of 2020, decided on 15.10.2020**, Hon'ble Supreme Court of India was considering application to condone the delay of 663 days. Expressing its anguish-ment on the issue of the government agencies ignoring the period of prescribed limitation, Hon'ble Supreme Court observed as under:-

“We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute subsists, the appeals/petitions have to be filed as per the Statues prescribed.”

Hon'ble Supreme Court then noticed that although some leeway is given for the government inefficiencies but the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government, as was done in **Collector, Land Acquisition Anantnag and another vs Katiji and other (1987) 2 SCC 107**.

9. Hon'ble Supreme Court then observed that position was later elucidated in [Office of the Chief Post Master General vs. Living Media India Ltd. \(2012\) 3 SCC 563](#), wherein it was observed by Hon'ble Apex Court as under:

“12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red- tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has

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miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.”

10. Hon’ble Supreme Court in **Bherulal’s case** (supra) then held as under:

“5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as “certificate cases”. The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.”

After making the aforesaid observation, the Hon’ble Supreme Court not only dismissed the special leave petition being time barred but also imposed costs

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of ₹25,000/- on the petitioner State.

11. Besides above, in **State of Punjab vs Charanjit Singh, Law Finder Doc Id # 42406**, it was observed by a coordinate Bench of this Court that even if it is true that procedure adopted in the government offices is lengthy and time consuming, this does not provide an excuse for condoning any amount of delay only because the law in condoning the delay is liberal. If the files are handled negligently, the law of limitation require to initiate proceedings within prescribed time and on special consideration is shown for the State.

12. In **State of Punjab Vs Smt. Shindo, Law Finder Doc Id # 809476**, a Division bench of this High Court observed that state as a litigant cannot be treated differently than an ordinary litigant by applying different yard sticks in the matter of condonation of delay or otherwise. In the appeal before High Court, delay of 241 days was sought to be condoned. The ground for seeking condonation was that file shuffled between one law officer and another three times over, before it got approval of the Advocate General. Holding the same to be no sufficient ground for condoning the delay, the appeal was dismissed.

13. When in the light of above legal position, the facts of the case are analyzed, it is noticed that appellants have been grossly negligent in filing the appeal before first appellate court, as inaction on their part for long time has resulted into delay of three years.

14. In present case, the reasons given for condonation of delay by the appellants were not at all justified. Simply by stating that file moved from one office to another for seeking opinion and then was lost by one of

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the official, the appellants (respondents herein) cannot be allowed to file an appeal with delay of more than 03 years, without bringing on record any fact as to the action taken against the erring officers/officials.

15. It is noticed by this Court that in large number of cases, the Government seeks to condone the delay on the similar grounds. Despite repeated directions given by this Court as well as by the Hon'ble Apex Court in plethora of authorities, there appears to be no change in the attitude of the State Government. The appeals are filed with impunity by the Government with huge delays and delay is sought to be condoned by assuming as if there is no statute like Limitation Act or under the assumption that application for whatever delay, will be condoned by the Court. Rarely any action is taken against erring officials/public servants for their inaction of not taking the decision well within time resulting in huge delays. This practice must be put to stop.

16. In view of above, the impugned order passed by learned first appellate court, condoning the huge delay of 1066 days i.e., more than 03 years, cannot be sustained. The impugned order is hereby set aside. The revision is accordingly accepted.

(DEEPAK GUPTA)
JUDGE

November 30th, 2022
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No